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July 3, 2008

**VIA FACSIMILE AND  
REGULAR MAIL**

Michael A. Faillace, Esq.  
Michael A. Faillace & Associates, P.C.  
110 East 59th Street  
32nd Floor  
New York, NY 10022

Re: Pena et al v. SP Payroll, Inc. et al, 07-CV-7013 (S.D.N.Y.)

Dear Mr. Faillace:

We are in receipt of your request that Defendants stipulate to permit you to amend the complaint in accordance with the Proposed First Amended Complaint which you provided to us. If you recall, at the conference before the judge, we agreed to consider stipulating to permit Plaintiffs to remove the collective and class claims based on your representation that your clients did not want to represent anyone other than themselves, and to add the opt-in plaintiffs as named plaintiffs for the federal and state claims. We did not agree to stipulate to allow you to amend the complaint in any other respect.

Therefore, we will agree to stipulate to permit you to amend your complaint solely to add seven of the nine opt-ins as named plaintiffs and to drop the class and collective claims. However, we will not agree to allow you to include Patricio Gonzalez or Edison Alvarez as named plaintiffs. As you know, Mr. Gonzalez has signed a document, that was produced to you in discovery, which admits that he has been fully paid by Defendants and that Defendants owe him no additional money. Mr. Alvarez is not owed any money by the Defendants and there are documents that were produced to you and which you produced to us that reflect varying additional amounts of cash given to Mr. Alvarez while he was employed by Defendants. In fact, by our calculations, Mr. Alvarez was paid more than \$30,000 in cash, in addition to his paychecks, and he actually was overpaid and owes the Company more than \$13,000. Accordingly, in light of our intent to file a partial motion for summary judgment, amending the complaint to add these individuals would be futile.

We also will not agree to permit you to change the allegations from the original complaint, which you have sought to do in the Proposed First Amended Complaint. For example, in addition to adding allegations pertaining to the newly named plaintiffs and removing the class and collective

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Michael A. Faillace, Esq.  
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claims, the First Amended Complaint varies from the original complaint in paragraphs 8, 9, 10, 11, 38, 39 and 45 of the First Amended Complaint.

Accordingly, if you provide us with a revised Proposed First Amended Complaint which addresses the items identified above, we will agree to stipulate to the amendment. As noted above, we will be serving and filing our partial motion for summary judgment on July 14, 2008.

Very truly yours,

SEYFARTH SHAW LLP



Peter A. Walker



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## Facsimile Transmission

Date: July 3, 2008

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FROM: Peter A. Walker

PHONE: 212-218-5570

RE: Pena et al. v. SP Payroll, Inc. et al.

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